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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 SHOSH YONAY and YUVAL YONAY,

12 Plaintiffs,

13 v.

14 PARAMOUNT PICTURES
15 CORPORATION, a Delaware corporation,
and DOES 1-10,

16 Defendants.

Case No. 2:22-CV-3846-PA

**DEFENDANT PARAMOUNT
PICTURES CORPORATION'S
REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
MOTION TO DISMISS
PLAINTIFFS' FIRST
AMENDED COMPLAINT**

Hearing Date: November 7, 2022

Hearing Time: 1:30 PM

Place: Courtroom 9A

Judge: Hon. Percy Anderson

1 Defendant Paramount Pictures Corporation (“PPC”) respectfully requests
 2 that the Court take judicial notice of Exhibits A-E to the Declaration of Patrick S.
 3 McNally (“McNally Declaration”) made in support of PPC’s Motion to Dismiss
 4 Plaintiffs’ Complaint (“Motion”).

5 Rule 201 of the Federal Rules of Evidence provides that a court “must take
 6 judicial notice if a party requests it and the court is supplied with the necessary
 7 information” of an adjudicative fact, where the fact is “not subject to reasonable
 8 dispute because it . . . can be accurately and readily determined from sources whose
 9 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2), (c)(2). In
 10 ruling on a motion to dismiss for failure to state a claim, the Court may consider
 11 “documents attached to the complaint, documents incorporated by reference in the
 12 complaint, or matters of judicial notice . . . without converting the motion to
 13 dismiss into a motion for summary judgment.” *United States v. Ritchie*, 342 F.3d
 14 903, 907–08 (9th Cir. 2003).

15 Accordingly, the Court can, and should, consider the following Exhibits
 16 when ruling on PPC’s Motion:

17 ***Yonay’s Article and Top Gun: Maverick.*** Exhibits A and B to the McNally
 18 Declaration are true and correct copies of Ehud Yonay’s 1983 article entitled “Top
 19 Guns” (the “Article”) and the 2022 film *Top Gun: Maverick* (“Maverick”),
 20 respectively. Because the Complaint alleges that *Maverick* infringes Plaintiffs’
 21 copyright in the Article, and discusses the purported similarities between the works,
 22 both works are subject to judicial notice and are otherwise incorporated by
 23 reference into the Complaint. *See, e.g., Silas v. HBO*, 201 F. Supp. 3d 1158, 1168
 24 (C.D. Cal. 2016) (taking judicial notice of a motion picture trailer, a shortened
 25 trailer, a screenplay, and the *Ballers* television series that were all referenced in the
 26 plaintiff’s copyright complaint but not attached), *aff’d* 713 F. App’x 626, 627 (9th
 27 Cir. 2018); *Gilbert v. New Line Prods., Inc.*, 2009 WL 7422458, at *2 (C.D. Cal.
 28 Nov. 16, 2009) (taking judicial notice of the screenplays plaintiff alleged were

1 infringed, as well as defendants’ alleged infringing movie); *Campbell v. Walt*
 2 *Disney Co.*, 718 F. Supp. 2d 1108, 1111 n.3 (N.D. Cal. 2010) (same); *Fillmore v.*
 3 *Blumhouse Productions, LLC*, 2017 WL 4708018, at *2 (C.D. Cal. July 7, 2017)
 4 (considering manuscript and film referenced in, but not attached to, plaintiff’s
 5 complaint).¹

6 ***Excerpt of Ehud Yonay’s 1993 Book.*** Exhibit C to the McNally Declaration
 7 is a true and correct copy of the cover page from Ehud Yonay’s 1993 book *No*
 8 *Margin for Error: The Making of the Israeli Air Force*. The Court may take
 9 judicial notice of the fact of the publication of this book because it is a fact that
 10 “can be accurately and readily determined from sources whose accuracy cannot
 11 reasonably be questioned.” Fed. R. Evid. 201(b)(2). Especially as the book was
 12 authored by Yonay, the accuracy of this fact cannot be reasonably questioned. *See,*
 13 *e.g., Clinical Nutrition Centers, Inc. v. Mayo Found. for Med. Educ. & Rsch.*, 135
 14 F. Supp. 3d 1267, 1271 (N.D. Ga. 2013) (taking judicial notice of the date of a
 15 book’s publication); *United States v. Davis*, 2012 WL 1313498, at *6 n. 4 (M.D.
 16 Pa. Apr. 17, 2012) (same); *Poindexter v. Warner/Chappell Music Inc.*, 2009 WL
 17 302064, at *1 n.1 (S.D.N.Y. Feb. 9, 2009) (taking judicial notice of song titles in
 18 album).

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 24 ¹ *See also Ritchie*, 342 F.3d at 908 (“Even if a document is not attached to a complaint, it
 25 may be incorporated by reference into a complaint if the plaintiff refers extensively to the
 26 document or the document forms the basis of the plaintiff’s claim.”); *Sobhani v.*
 27 *@radical.media, Inc.*, 257 F. Supp. 2d 1234, 1236 n.1 (C.D. Cal. 2003) (considering
 28 content of motion picture *Cast Away*, which was the subject of the plaintiff’s copyright
 claim); *Burnett v. Twentieth Century Fox*, 491 F. Supp. 2d 962, 966 (C.D. Cal. 2007)
 (considering content of television program that formed basis of copyright claim but was
 not attached to complaint); *Kennedy v. Paramount Pictures Corp.*, 2013 WL 1285109, at
 *3 (S.D. Cal. Mar. 27, 2013) (incorporating by reference a DVD copy of defendant’s film
Titanic after plaintiff referenced the film in the complaint).

1 ***The Contract Between Ehud Yonay and California Magazine.*** Exhibit D
2 to the McNally Declaration is a true and correct copy of an April 29, 1983 contract
3 between Ehud Yonay and California Magazine, Inc. (the “*California Magazine*
4 Contract”). “Ninth Circuit law permits the Court to consider documents not
5 specifically incorporated by reference if the ‘plaintiff’s claim depends on the
6 contents of the document, the defendant attaches the document to its motion to
7 dismiss, and the parties do not dispute the authenticity of the document, even
8 though the plaintiff does not explicitly allege the contents of that document in the
9 complaint.’” *Zella v. E.W. Scripps Co.*, 529 F. Supp. 2d 1124, 1131 (C.D. Cal.
10 2007) (quoting *Kniesel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)). Here,
11 Plaintiffs’ Complaint depends on the *California Magazine* Contract’s contents.
12 Specifically, Plaintiffs claim that they are “the sole owners of the U.S. copyright in
13 [Yonay’s article],” Compl. ¶ 29, and devote many paragraphs of the Complaint to
14 the copyright’s “chain of title,” including its registration, *id.* ¶¶ 21–28, 68. The
15 *California Magazine* Contract is part of that chain of title. Indeed, as the Complaint
16 recites, “Ehud Yonay’s Story was originally published on April 21, 1983 in the
17 May 1983 issue of *California* magazine and was registered in the U.S. Copyright
18 Office on October 3, 1983 (Reg. No. TX0001213463),” *id.* ¶ 21, which, of course,
19 only occurred because of the *California Magazine* Contract. Moreover, California
20 Magazine registered the cited copyright registration.² The Court should therefore
21 consider its contents when adjudicating PPC’s Motion to Dismiss. *See, e.g., Coto*
22 *Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010) (agreement not
23 mentioned in the complaint could be considered on review of dismissal because
24 plaintiff’s claim depended on the agreement’s contents).

25 ***The 1975 Senate Report.*** Exhibit E to the McNally Declaration is a true and
26 correct copy of a United States Senate report of a 1975 hearing before the

27 _____
28 ² The Court can take judicial notice of the copyright registration, which is Exhibit F to the
McNally Declaration, as it is incorporated by reference in the complaint.

1 Committee on Armed Services (“Senate Report”). Courts routinely take judicial
2 notice of governmental documents under Rule 201(b)(2). *See, e.g., Crofts v.*
3 *Issaquah Sch. Dist. No. 411*, 22 F.4th 1048, 1051 (9th Cir. 2022) (taking judicial
4 notice of letter written by government); *Dudum v. Arntz*, 640 F.3d 1098, 1101 n.6
5 (9th Cir. 2011) (judicial notice may be taken of official information that is posted
6 on a government website); *Ning Xianhua v. Oath Holdings, Inc.*, 536 F. Supp. 3d
7 535, 546 (N.D. Cal. 2021) (taking judicial notice of a Senate report); *Lopez v. Bank*
8 *of Am., N.A.*, 505 F. Supp. 3d 961, 969–71 (N.D. Cal. 2020) (courts may generally
9 take judicial notice of transcripts of congressional hearings). The Court should
10 similarly take judicial notice of the facts in the Senate Report.

11 * * *

12 For the foregoing reasons, when considering PPC’s Motion to Dismiss
13 Plaintiff’s Complaint, the Court should take judicial notice of the materials attached
14 to the McNally Declaration as Exhibits A-E.

15 Dated: September 28, 2022

O’MELVENY & MYERS LLP

16 By: /s/ Molly M. Lens
17 Molly M. Lens

18 *Attorney for Defendant*
19 *Paramount Pictures Corporation*